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Supreme Court of the United States

OCTOBER TERM, 1942

No. 456

AIR REDUCTION COMPANY, INCORPORATED,
Petitioner,
against
COMMISSIONER OF INTERNAL REVENUE,
Respondent.

REPLY BRIEF FOR PETITIONER

The Government's brief (pp. 8-10), in attempting to show that the acquisition by the petitioner of the remaining minority shares of its subsidiary company in exchange for its own stock did not come within the reorganization provisions of the statute, advances the following two arguments:

1. In the final transaction in question, less than the required statutory percentage of the stock of the subsidiary was acquired; and

2. Since the petitioner had previously acquired some shares of its subsidiary's stock by cash purchases, such cash purchases prevented the application of the reorganization provisions of the 1934 Act, under the *Southwest Consolidated* decision (315 U. S. 194).

In the Government's brief, those two arguments are hopelessly intermingled and confused. Considered separately, neither one will stand analysis.

1. In the *Dana* case, as in the present case, the parent corporation acquired the remaining minority shares of a subsidiary company from the sole remaining minority stockholder in a single transaction. In both cases, the parent corporation already owned the majority of the shares of the subsidiary and acquired all the remaining shares in exchange for its own voting stock in a final transaction without any written plan of reorganization. In the *Dana* case, such final transaction was nevertheless held to be a reorganization, within the terms of the statute. The argument in the present case that the decision of the Court below can be justified on the ground that the final transaction involved less than 80% of the stock of the subsidiary brings that decision squarely in conflict with the decision of the Third Circuit in the *Dana* case.

2. The argument that petitioner's prior cash purchases of less than 18% of the subsidiary's stock prevented the application of the reorganization provisions of the 1934 Act, under the decision of this Court in the *Southwest Consolidated* case, is obviously unsound. So long as at least 80% of the stock is acquired solely in exchange for voting stock of the acquiring corporation the statute applies; and it makes no difference whether the acquiring corporation, in other transactions, acquires the balance of the stock or not. If the Government's argument were sound, then the cash purchase by a corporation of a single share of the stock of another corporation would prevent the application of the reorganization provisions of the 1934 Act, even though the purchasing corporation subsequently acquired all the remaining shares of the other corporation in a single transaction solely in exchange for its own voting stock.

As pointed out in petitioner's main brief (pp. 12-13), that provision in the 1934 Act does not affect the present

case, and this Court's decision in the *Southwest Consolidated* case is not susceptible of any such interpretation. The fact that such interpretation was apparently adopted by the Court below and has been seriously advanced in the Government's brief in this Court is an additional reason why certiorari should be allowed, so that this Court can correct any such erroneous interpretation of its decision.

The petition for certiorari should be granted.

November, 1942.

Respectfully submitted,

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